

Election #3
1.21.03
PATENTS
15343-0028C3

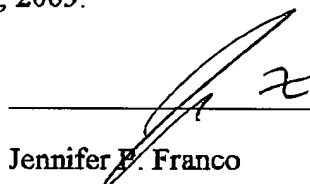
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application of:)
Theodore Spielberg)
Serial No.: 09/928,392) Examiner: Nickol, G.
Filed: August 13, 2001)
Art Unit: 1642
For: MICROPOROUS ENCAPSU-)
LATED ENDOCRINE CELL)
DISKS, BICONCAVE DISKS)
AND MULTIDIMPLED)
CHAMBERS FOR HORMO-)
NAL REPLACEMENT)

Cesari and McKenna, LLP
88 Black Falcon Avenue
Boston, MA 02210
January 15, 2003

CERTIFICATE OF TRANSMISSION

I hereby certify that the following paper is being facsimile transmitted to the Patent and Trademark Office on January 15, 2003.


Jennifer P. Franco

Honorable Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

ELECTION OF RESTRICTED CLAIM GROUP

This Amendment is filed in response to the Office Action mailed December 16, 2002. Claims 1-16 are pending in the case. The Examiner has restricted the pending claims as follows:

PATENTS
15343-0028C3

Group I containing claims 1-8, classified in class 435/174,
Group II containing claims 9-10, classified in class 435/283.1, and
Group III containing claims 11-16, classified in class 435/174.

Applicant respectfully elects Group I with traverse.

As noted in the Office Action, the claims in Groups I and III are all directed to the same class 435, subclass 174. Moreover, the Office Action does not appear to differentiate how the claims in Groups I and III differ. Instead, the discussion on pages 2-3 in the Office Action focuses on the alleged differences between the claims in Group II from those in Groups I and III.

Firstly, the Applicant respectfully submits the claims in Groups I and III are directed towards the same statutory invention. The claims in Group I teach a discoid microporous encapsulated endocrine cell for transplantation into an animal body. Similarly, the claims in Group III teach a flattened microporous membrane containing endocrine cellular material for implantation into an animal body. In addition, claims in both Groups I and III teach concavities that may be included in the endocrine cell microdisks. Clearly, while the claims in the Groups I and III may differ in scope, they are directed to the same statutory invention.

Secondly, the Applicant respectfully submits the claims in Group II are also directed to the invention taught by the claims in Groups I and III. The claims in Group II teach a flattened macrochamber with one or more surface concavities in which endocrine cells are contained in a microporous membrane. Based on the discussion above, it should be apparent that the flattened macrochamber taught by the claims in Group II is directed to the same statutory invention as the endocrine cell microdisks taught by the claims in Groups I and III.

PATENTS
15343-0028C3

Please charge any additional fee occasioned by this paper to our Deposit Account No.
03-1237.

Respectfully submitted,



Stephen E. Kabakoff
Reg. No. 51,276
CESARI AND MCKENNA, LLP
88 Black Falcon Avenue
Boston, MA 02210-2414
(617) 951-2500

CESARI AND MCKENNA, LLP

ATTORNEYS AT LAW
88 BLACK FALCON AVENUE
BOSTON, MASSACHUSETTS 02210

(617) 951-2500

FAX RECEIVED

JAN 16 2003

OFFICIAL GROUP 1600

ROBERT A. CESARI
JOHN F. MCKENNA
MARTIN J. O'DONNELL
THOMAS C. OKONSKI
JOSEPH H. BORN
PATRICIA A. SHEEHAN
MICHAEL E. ATTAYA
CHARLES J. BARBAS
WILLIAM A. LOGINOV
MICHAEL R. REINEMANN
RITA M. ROONEY
JOHN L. CAPONE*
MICHAEL J. BADZINSKI
ROBERT E. RIGBY, JR.
KEVIN GANNON
DUANE H. DREGER

*ADMITTED IN GA., TENN., AND RI ONLY

INTELLECTUAL PROPERTY
AND RELATED
CAUSER

A. SIDNEY JOHNSTON
EDWIN H. PAUL
OF COUNSEL

STEPHEN E. KABAKOFF
JAMES M. BEHME
PATENT AGENTS

SEAN J. SUTHERLAND
TECHNOLOGY SPECIALIST

TELECOPIER
(617) 951-3927

WEB SITE
www.c-m.com
15343-0028C3

FACSIMILE COVER SHEET

DATE:	January 15, 2003
TOTAL PAGES WITH COVER:	4
TO:	Examiner Nickol, Ph.D.
FIRM:	USPTO
FACSIMILE NUMBER:	703-305-3014
TELEPHONE NUMBER:	703-305-7143
FROM:	Stephen E. Kabakoff
COMMENTS:	

RE: Application Serial Number 09/928,392 filed on August 13, 2001

SPECIAL INSTRUCTIONS:

If you do not receive all pages, or you are not the intended recipient, please contact us at (617) 951-2500 as soon as possible.